



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-03-25

DATE: June 12, 2003

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Issues Related to Informal Dispute Resolution

TO: Survey and Certification Regional Office Management (G-5)
State Survey Agency Directors

This memorandum provides guidance to State Survey Agencies (SAs) regarding the informal dispute resolution (IDR) process. Currently, two SAs in the Centers for Medicare & Medicaid Services (CMS) Region VI have delegated the authority for conducting IDR to an independent third party. Another SA anticipates legislation will be passed this year to remove the IDR process from the SA. States have asked how the establishment of independent IDR impacts the work of SAs and what obligations an IDR process conducted by an outside entity may impose on the survey process.

Under an agreement with CMS, the SA is responsible for all Federal certification decisions. The basis of this conclusion is contained in the 1864 Agreement between the Secretary of Health and Human Services and the State. Article I of that Agreement stipulates that all references in the agreement to the "State" include the SA. Article II stipulates required functions to include the certification of compliance or noncompliance of Medicare skilled nursing facilities. Furthermore, the SA cannot subcontract any of its survey and certification functions without prior written approval of CMS, as stated in Article X of the Agreement.

The IDR process is a survey and certification function. While States are granted some flexibility as to how survey and certification activities are conducted, they must adhere to Federal statutory and regulatory requirements, as well as the State Operations Manual (SOM). For nursing homes, the SOM sets forth procedural requirements for the IDR process in Section 7212. Thus, while other entities outside the SA are allowed to conduct certain survey and certification processes such as IDR, the SA retains final certification authority and responsibility for all Medicare and dually participating providers.

Therefore, if an outside entity conducts IDR, the results of the IDR process may serve only as a recommendation to the SA of noncompliance or compliance with the Federal requirements for skilled nursing facilities.

While SAs may take the opportunity to review the results of IDR to improve the survey process and bring policy issues to the attention of CMS, recommendations from an IDR are not binding on CMS and cannot impede or delay any enforcement proceedings.

We hope this clarification is helpful. For additional questions, please contact Elaine Lew at 410-786-9353 or via email at Elew@cms.hhs.gov.

Effective Date: This policy is effective immediately.

Training: This policy should be shared with all appropriate survey and certification staff, their managers, and the state/regional office training coordinators.

/s/
Steven A. Pelovitz